COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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KeySpan Energy Delivery New England	**)**	**D.T.E. 01-105**
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INITIAL BRIEF OF THE

MASSACHUSETTS DIVISION OF ENERGY RESOURCES

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I. INTRODUCTION AND PROCEDURAL HISTORY

On November 30, 2001, KeySpan Energy Delivery New England ("KeySpan" or the "Company") filed its 2001 - 02 to 2005 - 06 Long Range Resource and Requirements Plan ("Supply Plan")[1] with the Department of Telecommunications and Energy (the "Department"). The Department convened a public hearing and procedural conference on January 31, 2002. The Attorney General's Office intervened as of right and the Massachusetts Division of Energy Resources ("DOER") submitted a motion to intervene, which was granted. The Department conducted an adjudicatory hearing on July 17, 2002.

II. STATEMENT OF DOER POSITION

Based upon a review of the Supply Plan and the information developed through discovery and during the adjudicatory hearing, DOER believes that the Supply Plan is sufficient in most respects, but requires some substantive modifications and additions.

The Department, in considering and issuing its determination, should require that KeySpan submit a remedy addressing the capacity shortfall in its Colonial Gas division for the upcoming winter, as revealed during the course of the evidentiary hearing. The Department should also direct KeySpan to address the predictive limitations of the Supply Plan by conducting a sendout analysis based upon KeySpan's primary divisions and upstream pipeline capacity. Finally, the Department should direct KeySpan to submit all gas commodity, transportation and storage capacity contracts, including extensions and modifications, to the Department, through the appropriate contract review proceedings, as prescribed by G.L. c. 164, §§ 94 and 94A.

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1 The Supply Plan presented the combined forecast and customer requirements for Boston Gas

A. KeySpan Should Address Its Imminent Capacity Shortfall in the Cape Cod Division

If KeySpan does not have sufficient capacity under design conditions, it will rely on "other purchased resources" for planning purposes. Exh. 1 at pages 119 – 120. However, for the design day, the Company can not simply rely on these other resources; limitations on the reliability of the resource and the lack of back-up capacity to ensure deliveries to the Company's city gate precludes this. Therefore, the Company's resource portfolio shouuld have sufficient capacity entitlements to meet design day sendout requirements. Exh. Key - 1 at page 120.

The Supply Plan BASE CASE, when filed, relied upon Algonquin's Hubline capacity being in service by November 1, 2002 to fill the Colonial Gas Cape Cod Division's incremental need on the design day of 2002 – 2003 for 13,196 MMBtus. Tr. at page 61. During the adjudicatory hearing, the Company acknowledged that the delay of the in-service date for Hubline (from November 1, 2002 to sometime next year) would result in a design day capacity shortfall, requiring the Company to procure an additional 3,000 MMBtus for its Cape Cod division for the upcoming winter. Tr. at pages 61 and 77; see also Exh. AG 2-4. The Company described the possibility of enlarging its interim contract with Algonquin from 10,000 MMBtus to 13,196 MMBtus per day for the coming winter season, to provide the additional capacity; Tr. at pages 61, 62, 77; although that has not yet been accomplished.

DOER is concerned about KeySpan's apparent shortage of design day capacity for the upcoming winter. KeySpan should not enter into this winter season lacking sufficient firm

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Company, Colonial Gas Company, and Essex Gas Company.

capacity under contract to meet its design day requirements, which could jeopardize delivery(ies) to default service customers on the coldest day.

Accordingly, DOER recommends that the Department require KeySpan to address this shortage and to file its proposed remedy with the Department on or before December 1, 2002.

B. Keyspan Must Refine Its Analysis of Sendout Capability

Table G-23D (Revised) of the Supply Plan, the HUBLINE DELAY CASE,[2] suggests that no "Other Purchased Resources" are required on the design day, until the winter of 2003 – 2004. However, as elicited through testimony during the evidentiary hearing, the more refined analysis used by Keyspan in preparing Exh. AG 2-4,[3] brought forth the need for incremental peak-day resources that Table G-23D (Revised) failed to identify, beginning in the winter of 2002 – 2003. Tr. at pages 59 – 61.

It is axiomatic that the Company's ability to deliver gas to a specific location on its distribution system is affected by the operating parameters and configuration of the interstate pipeline system and the local distribution system; e.g. capacity and pressure; as well as the gas supply resources that the Company holds under contract, to ensure sufficient deliveries to meet

2 During the evidentiary hearing, KeySpan acknowledged that the delay on Hubline's in-service date made it appropriate to consider the DELAY CASE more likely to occur than the original BASE CASE scenario. Tr. at page 107.

3 Exh. AG 2-4 was originally offered as Exh. TEP – 3 in D.T.E. 02-28, which is why DOER had the opportunity to see and compare it with Table G – 23D (Revised) in this proceeding. The Bench took administrative notice of DTE 02-18 during the instant proceeding.

Exh. AG 2-4 presented a better analysis of the Company's system based on examining each division and upstream pipeline. Table G – 23D (Revised) used a less restricted, pooled or integrated, approach. See Exh. DTE – 1-1 filed in DTE 02-18.

sendout requirements.[4] The Company's resource portfolio is comprised of approximately eighty-five transportation, storage, and gas supply contracts. Each contract contains provisions for maximum daily quantities or withdrawals, receipt and delivery points, and a number of other service parameters. While KeySpan manages these resources on an integrated basis, the sum of the daily requirements of the Company's major service areas is not necessarily matched by the sum of the daily requirements to each area or division, due to various contractual limitations as well as operating capabilities and limitations upon the inter-state and intra-state systems. See Exh. DTE 1 – 1 in DTE 02-18. An analysis that includes these considerations and limitations provides a more accurate view of the Company's design day capabilities and need for incremental capacity.[5] Accordingly, DOER recommends that the Department, in its determination concerning the Supply Plan, direct that KeySpan adopt a design day sendout

4 The Company's ability to deliver gas is further affected by two other circumstances: increasing reliance on market area deliveries for its gas supply (market area deliveries being less reliable supply sources than supply area deliveries) Exh. DOER 1 -40; and requirements for a significant number of LNG trucks to refill on-system storage tanks during the design season. See, for example, Exh. TEP-1 and Exh. DTE 1-3 in DTE 02-18, which states that 1 Bcf (requiring 1,111 LNG trucks) is an appropriate limit for winter liquid refills and will not affect the reliability of gas service during peak periods. See also Exh. TEP-4 in DTE 02-18, which represents that, for the winter of 2002 – 2003, the Boston Gas division will require LNG refills of 2.3 Bcf and over 2,500 trucks during a design winter, even with the Company's recent acquisition of the interim Algonquin transportation capacity. The Company's ability to transport sufficient amounts of LNG to refill its LNG storage space in a design year, without affecting reliability, warrants concern.

5 For example, although Keyspan has a degree of flexibility in moving pipeline-delivered gas across the system, there are operational and contractual limitations on the amount of gas that can flow through the take stations on an hourly basis and/or can flow from one interstate pipeline into another. To the extent that the hourly sendout requirements of a particular service area exceed the hourly gas flow available for that area under existing resource contracts, or the hourly and daily flows from one pipeline to another are limited, the Company may need to secure an additional resource to ensure adequate deliveries at a particular location. It is necessary for the Company to evaluate its delivery capabilities at specific points on the system that, in effect, represent supply "bottlenecks." A more refined analysis, broken down by division, provides a truer look at the Company's system than the integrated or pooled analysis performed by the Company and represented in Table G – 23D (Revised). See Exh. DTE 1-1 in DTE 02-18.

capability methodology incorporating an analysis by division and upstream pipeline capacity.[6]

C. Keyspan Must Submit All Contracts for Purchase or Sale of Gas Commodity, Transportation, and Storage Capacity To the Department

The Department has been granted considerable authority by the Legislature over investor-owned and municipal natural gas utilities in Massachusetts. This authority carries with it concomitant responsibilities:

> The regulation of the natural gas industry requires the [Gas] division to review forecast and supply plan filings, long-term supply contracts, numerous non-tariffed contracts for the sale and transportation of natural gas [emphasis added], and conservation and load management programs.[7]

G.L. c. 164, § 69I provides the forum and authority for the Department's review of long range forecast and supply plans, based upon a set of substantive criteria set forth by the statute and the regulations at 980 CMR 7.03.

G.L. c. 164, §§ 94 and 94A provide the authority for the Department to review, and obligate the local distribution companies to submit, in the form and within the periods of time prescribed by the Department, all schedules of rates, prices, charges, and contracts for the purchase or sale, or affecting the price, of natural gas.

The regulations at 220 CMR 5.01(2) identify contracts falling within their scope as

6 DOER recommends the approach employed by KeySpan for preparing Exhs. TEP – 3 and TEP – 4 in DTE 02-18.

7 Statement of the duties and responsibilities of the Gas Division of the Department of Telecommunications and Energy, as set forth on the Department's official web site;

follows:

> [c]ontracts for the sale of gas or electricity to which any gas company or electric company is a party… except contracts subject to M.G.L. c. 164, § 94A and except contracts for the sale of electricity subject to the jurisdiction of the Federal Power Commission."[8]

220 CMR 5.02(4)(b) provides that contracts [as set forth above] shall "show the date of execution and the effective date, which shall be not earlier than 30 days after the filing. Sufficient time must be allowed for transmittal."

The Department is charged with the review of all rates and tariffs, including all contracts and agreements that may affect rates and tariffs, in order to determine whether they are in the public interest. The Department cannot make such determinations unless all gas commodity, transportation, and storage capacity contracts, including substantive modifications; revisions, extensions, etc.; are submitted to the Department by the local distribution companies.[9]

The submission of all such gas contracts is necessary to assure that a local gas distribution company has identified market opportunities and determined that the proposed contract(s) provides a potentially better combination of aggregate resources than was proposed in the company's previously approved forecast and supply plan. Further, review by the

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www.state.ma.us/dpu/gas/index.htm.

8 While it could be argued that the obligation to submit contracts to the Department may be limited to gas supply, as distinguished from transportation and storage services, neither the statutes nor the regulations include such a limitation. The regulations do not limit their purpose or application in any manner. Further, as read, these regulations are consistent with the provisions of 220 CMR 6.03 (CGAC), which encompass all costs of firm gas.

9 An operational example of a local gas distribution company's compliance with this requirement is illustrated by the submission dated December 2, 1999 by the law firm of Keegan, Werlin & Pabian, on behalf of the Commonwealth Gas Company in D.T.E. 99-112. The Department issued a Letter of Approval in response to this submission on May 10, 2000.

Department allows for consideration of whether the pricing terms are competitive with others that were available to the company at the time of acquisition, as well as the opportunities that were available to other local distribution companies in the region. See D.P.U. 94-174-A (1996) at pages 27 – 28.

A review of Exh. Key -1 reveals that KeySpan has extended, terminated, renegotiated and/or substantively revised many of its long-term transportation and storage capacity contracts, modifications, and extensions that have not been submitted to the Department. The Company defends failing to comply with the legal requirement to file these contracts by asserting that it is not obligated to submit them; that the Department had an opportunity to review them within the context of the Company's previous forecast and supply plan submissions; Exhs. DOER 2-1 and 2-2.

The Company's assertion is without merit. G.L. c. 164, § 69I provides for review and approval of forecast and supply plans, which are designed to predict area sendout requirements over a five-year period; it does not provide a forum for the submission of individual contracts, creative interpretations notwithstanding.[10]

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10 KeySpan is confusing the scope and purpose of a review of a forecast and supply plan with the submission and review of commodity and capacity contracts. Neither of KeySpan's most recently approved Supply Plans; D.T.E. 97-81 and D.T.E. 98-90; address the submission of contracts to the Department, nor do they include an inquiry intended to review contracts or contract extensions, renewals, or modifications. The inquiry under G.L. c. 164, § 69I is a global one, focused on the sendout requirement and based on a review of company projections designed to model "what is most likely to occur" over the forecast period. D.T.E. 98-90; Colonial Gas; at page 3.

While the Company may rely upon the Department's approval of a recent resource and supply plan to establish consistency with the Company's portfolio objectives; D.T.E. 02-18 at page 9; a proceeding under G.L. c. 164, § 69I is not susceptible to the public interest analysis engaged in by the Department upon the submission of a contract for commodity or capacity; e.g. review of relevant price and non-price attributes of each contract; whether the contract compares favorably to the range of alternative options reasonably available to the company at the time of its decision to enter into a contract or a contract modification; which may occur within the context of a Section 94A review, or in a separate proceeding.[11] See also D.T.E. 02-18 at pages 9 – 10.

The Company's assertion that it is not obligated to submit these contracts flies in the face of the plain language of the statute, which does not carve out the exceptions inferred by the Company.[12] The Department should speak to this issue and instruct the Company to submit all gas commodity, transportation and storage capacity contracts, including revisions, extensions, etc., to the Department, not as an adjunct of a proposed forecast and supply plan proceeding, but in a separate proceeding[13] intended for the review of such contracts by the Department and

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11 See The Natural Gas Act, 15 U.S.C. Section 717c, which similarly provides that commody contracts, including transportation and capacity, be submitted to the Federal Energy Regulatory Commission.

12 G.L. c. 164, § 94A provides, in relevant part:

> No gas… company shall hereafter enter into a contract for the purchase of gas… covering a period in excess of one year without the approval of the department, unless such contract contains a provision subjecting the price to be paid thereunder for gas… to review and determination by the department in any proceeding brought under section ninety-three or ninety-four… .
> 10 It is axiomatic that a contract must be submitted to be reviewed. See also, D.P.U. 94-174-A at page 29:

13 The Department has found that contract approval does not terminate either an LDC's

as provided by G.L. c. 164, §§ 94 and 94A.

III. CONCLUSION

Pursuant to G.L. c. 164, § 69I, the Department is charged with ensuring "a necessary energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost."

DOER recommends that the Department, following its review of Keyspan's Supply Plan, make the determinations, require the modifications and additions, and direct the Company consistent with the analysis set forth herein.

Respectfully submitted,

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responsibilities for supply decisions or the Department's oversight of those supply activities. Bay State Gas Company, D.P.U. 95-87, at 11 (1995). The Department emphasizes that it reviews the prudence of gas supply contract decisions as of the time the utility decided to enter into the contract and not in hindsight with regard to outcome, whether good or ill.